IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No. 2303 of 2007

Date of Decision: 6.8.2007

Bahadur Singh

....**Appellant.**

Versus

Ajit Singh

...**Respondent.**

CORAM : **HON'BLE MR. JUSTICE RAJESH BINDAL**

Present:- Mr. Ramesh Sharma, Advocate
for the appellant.

RAJESH BINDAL, J.

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This is defendant's second appeal challenging the decree passed by the Civil Court which was affirmed in appeal by the District Judge.

The dispute is regarding common rasta on which the appellant/defendant was encroaching upon. Considering the pleadings and the evidence led by both parties, both the Courts below have come to the conclusion that the street in dispute is a common passage. The evidence in the form of sale deed brought on record by the appellant-defendant did not show his ownership on the street.

Learned counsel appearing for the appellant was not able to refer to any evidence on record which could lead to the conclusion that there is any perversity in the findings recorded by the Courts below. In this matrix of facts, the findings recorded by both the Courts below cannot be faulted with.

As far as the second issue raised by learned counsel for the appellant regarding the relief having been granted beyond the prayer made in the plaint is concerned, it has been categorically recorded by the learned District Judge, while dismissing the appeal of the appellant/defendant that the malba/debris was stored in the disputed street by the appellant/defendant during the pendency of the suit and the effective relief of use of the public passage could not be granted unless the malba/debris stored by the defendant/appellant in the street was removed. Accordingly, no illegality has been committed by both

the Courts below while directing the appellant/defendant to remove the malba.

Accordingly, I do not find any merit in the present appeal.

Dismissed.

(RAJESH BINDAL)
JUDGE

August 06,2007
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